



PATENT
Attorney Docket No. 102.0003-04000
Customer No. 22882

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7-27-01

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Gary Karlin Michelson, M.D.)
)
Serial No.: 09/626,636)
)
Filed: July 27, 2000)
)
For: APPARATUS AND METHOD OF)
INSERTING SPINAL IMPLANTS)

Group Art Unit: 3731

Examiner: U. Ho

Assistant Commissioner for Patents
Washington, D.C. 20231

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TECHNOLOGY CENTER RC3700

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(c)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), applicant brings to the attention of the Examiner the documents listed on the attached PTO 1449. This Information Disclosure Statement is being filed after the events recited in Section 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a Final Action or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), this Information Disclosure Statement is accompanied by a fee of \$180.00 as specified by Section 1.17(p).

Copies of the following documents were previously submitted in a prior application, Serial No. 08/484,927, filed June 7, 1995, upon which applicant relies for the benefits provided in 35 U.S.C. § 120:

1. U.S. Patent No. 4,501,269 issued February 1985 to Bagby.
2. U.S. Patent No. 4,570,624 issued February 1986 to Wu.
3. European Patent No. 0 077 159 issued April 1983.
4. Oter-Vich, Jose M.; Anterior Cervical Interbody Fusion with Threaded Cylindrical Bone; J. Neurosurg 63:750-753 (November 1985).

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Copies of the remaining listed documents are attached. Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

The present application Serial No. 09/626,636 is a continuation application of Serial No. 08/484,927, now U.S. Patent No. 6,096,038, which is a divisional application of Serial No. 08/074,781, now U.S. Patent No. 5,484,437, which is a continuation-in-part application of Serial No. 07/968,240, now U.S. Patent No. 5,741,253, which is a continuation of application Serial No. 07/698,674, now abandoned, which is a divisional application of Serial No. 07/205,935, now U.S. Patent No. 5,015,247.

Applicant brings to the Examiner's attention that the '437 patent and the '253 patent are the subject of litigation in the United States District Court for the Western District of Tennessee, Western Division, Case No. 99-2656GV, hereinafter referred to as Litigation 3 ("Lit. 3"). The claims of the '253 patent are generally directed to a method for preparing adjacent vertebrae to receive an implant. The claims of the '437 patent are generally directed to a method for inserting an implant.

In Litigation 3, the Defendants have asserted that U.S. Patent No. 3,719,186 is pertinent to the issue of validity of the '437 patent under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO-1449 in the column for the Examiner's initials the references identified by Defendants in Litigation 3 by the designation "Lit. 3." All "Lit. 3" references except for the '186 patent have been previously cited in an earlier Information Disclosure Statement provided for the present application.

The Defendants in Litigation 3 have also raised allegations of inequitable conduct in relation to the procurement of the '253 patent for failing to (1) highlight U.S. Patent No. 4,570,624 to Wu and (2) disclose EP 0077159 to Atkins and an article written by Jose Vich ("Anterior cervical interbody fusion with threaded cylindrical bone," *Neurosurg* 63: 750-753, 1985). The Plaintiff denies the allegations. Discovery documents relating to the aforementioned litigation are available upon request.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claims in the application and applicant(s) determine(s) that the cited document(s) do not constitute "prior art" under United States law, applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.


Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: July 16, 2001

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